

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED

DEC 16 1997

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Calling Party Pays Service Option  
in the Commercial Mobile Radio Services

)  
)  
)  
)

WT Docket No. 97-207

DOCKET FILE COPY ORIGINAL

COMMENTS OF MOTOROLA, INC.

**Motorola, Inc.**

Mary E. Brooner  
Assistant Director, Telecommunications  
Strategy and Regulation  
Corporate Government Relations Office  
Motorola, Inc.  
1350 I Street, N.W., Suite 400  
Washington, D.C. 20005

(202) 371-6900

Dated: December 16, 1997

045

## **SUMMARY**

Motorola, Inc. ("Motorola") commends the Commission for initiating its inquiry exploring a calling party pays ("CPP") service option for commercial mobile radio service ("CMRS") providers. As discussed in detail in the attached comments, wide-spread availability of a CPP option is expected to serve the public interest by promoting two major goals of Congress and the Commission -- namely: (1) facilitating the effective use of radio spectrum, and (2) increasing the level of competition in local exchange and exchange access markets.

Industry analysts and members of the wireless community agree that the use of called party pays practices in the U.S. wireless marketplace has dampened consumer acceptance of wireless offerings and is a significant factor preventing wireless carriers from emerging as realistic alternatives in the market for local exchange services. Authorities also agree that wide-spread availability of a calling party pays service option would help overcome the prevailing customer perception of wireless products as being "for emergency use only" and would stimulate wireless network usage by increasing the number of calls to wireless phones. In these same respects, broader implementation of calling party pays is expected to make consumers more likely to view wireless phones as substitutes for landline services, thereby increasing the competitive potential of wireless offerings in the market for local exchange and exchange access services.

Although calling party pays has been introduced in the U.S. in local market trials, it has not emerged on a wide-scale basis largely because of state regulatory barriers and the lack of consistent, nationwide implementation methods. To help overcome these impediments, Motorola urges the Commission to declare CPP to be in the public interest and to establish a

federal policy framework promoting the voluntary provision of CPP by CMRS providers on a nationwide basis. As part of its national policy framework for CPP, the Commission should adopt federal policies requiring local exchange carriers (“LECs”) to cooperate in providing CMRS carriers the connections, functionalities, and billing information necessary to implement CPP. In addition, the Commission should require industry segments to work together to resolve the technical aspects of CPP and to develop: (1) workable procedures to enable the transmission of customer billing information; (2) mechanisms for billing “transient” calling parties and preventing revenue “leakage;” and (3) with participation from the states, uniform nationwide customer notification procedures.

Finally, Motorola urges the Commission to refrain from mandating that wireless carriers offer CPP service and to avoid issuing detailed regulations governing the provision of CPP. Wireless operators should be permitted to provide CPP on a voluntary basis as their business plans and customer demands dictate. Likewise, the Commission should not adopt detailed regulations governing CPP pricing structures or levels. Rather, competition among wireless providers should be relied on to ensure that the retail price of CPP is just and reasonable.

The adoption of procedures consistent with these recommendations will serve the public interest by helping to facilitate nationwide implementation of a CPP service option. This, in turn, will promote more efficient and effective use of wireless spectrum and will enhance the competitive potential of wireless offerings in the market for local exchange telephone services.

## TABLE OF CONTENTS

I.	INTRODUCTION/BACKGROUND .....	1
II.	A NATIONAL POLICY FRAMEWORK PROMOTING THE AVAILABILITY OF A CALLING PARTY PAYS SERVICE OPTION IS CRITICAL TO MEETING THE GOALS OF THE COMMUNICATIONS ACT.....	3
A.	Wide-spread Availability Of CPP Will Promote Several Of Congress's And The Commission's Major Goals .....	3
B.	Enunciation Of A National Policy For CPP Is Crucial To Ensure That A CPP Service Option Is Made Available .....	7
III.	THE FCC HAS CLEAR STATUTORY AUTHORITY TO ESTABLISH A NATIONAL POLICY FRAMEWORK FOR CMRS CALLING PARTY PAYS .....	8
A.	The FCC Has Authority To Establish A National Policy For CPP Under Sections 332 And 2(b) Of The Communications Act.....	8
B.	The FCC Has Authority To Establish A National Policy For CMRS CPP In Accordance With Its Exclusive Jurisdiction Over LEC-CMRS Interconnection .....	9
C.	States' Limited Jurisdiction Over "Other Terms And Conditions" Does Not Undermine The FCC's Authority To Establish A National Policy For CPP.....	12
IV.	THE COMMISSION'S NATIONAL POLICY FRAMEWORK SHOULD REQUIRE AFFECTED INDUSTRY SEGMENTS TO DEVELOP A TECHNICAL AGREEMENT ON METHODOLOGIES TO IMPLEMENT CMRS CPP SERVICE.....	15
A.	Affected Industry Segments Should Be Encouraged To Work Together To Reach Consensus On Fundamental Technical Issues.....	15
B.	The Commission Should Not Develop Detailed Federal Regulatory Requirements That Over-Regulate CPP .....	18
V.	CONCLUSION.....	20

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Calling Party Pays Service Option	)	WT Docket No. 97-207
in the Commercial Mobile Radio Services	)	

**COMMENTS OF MOTOROLA, INC.**

**I. INTRODUCTION/BACKGROUND**

Motorola, Inc. ("Motorola") hereby submits these comments in response to the Notice of Inquiry ("NOI") adopted by the Commission on September 25, 1997, in the above-captioned proceeding.<sup>1</sup> The NOI solicits commenters' views on a number of issues associated with the implementation of a calling party pays ("CPP") service option for commercial mobile radio service ("CMRS") providers. In addition, the NOI asks commenters to address whether the existence of a CPP option is consistent with the public interest and, if so, what the Commission can do to facilitate wider availability of CPP.<sup>2</sup>

Motorola commends the Commission for initiating this inquiry, which is widely viewed as a significant step toward the implementation of changes that will revolutionize the role of wireless communications in the United States. As noted in the NOI, calling party pays is the standard calling pattern for wireless and wireline telecommunications services in most European

---

<sup>1</sup> *Calling Party Pays Service Option in the Commercial Mobile Radio Services*, WT Docket No. 97-207, FCC No. 97-341 (rel. Oct. 23, 1997) [hereinafter *NOI*].

<sup>2</sup> *Id.*

countries. It is also the model for landline calls in the U.S. In contrast, the standard for *wireless* calls in the U.S. is called party pays – domestic wireless subscribers generally pay a flat fee for connection to the network *and* pay per minute airtime charges for *all* calls initiated *or* received.<sup>3</sup>

Market researchers and members of the wireless community agree that the use of called party pays billing practices has dampened consumer acceptance of wireless communications in the U.S. and is a major factor preventing wireless carriers from emerging as realistic alternatives in the market for local exchange services.<sup>4</sup> Industry analysts and wireless operators also agree that wide-spread implementation of a calling party pays service option would significantly increase wireless network usage and make consumers more likely to view wireless phones as substitutes for landline offerings.<sup>5</sup>

Although calling party pays has been introduced in several market trials throughout the country, state regulatory barriers and the lack of a consistent, nationwide implementation plan have thwarted the development of CPP on a wide-scale basis. To help overcome these impediments, Motorola urges the Commission to:

- ◆ Establish a national policy promoting the availability of a uniform, nationwide voluntary CPP service option;
- ◆ Adopt federal policies requiring LECs to cooperate in providing CMRS carriers the connections, functionalities, and billing information necessary to implement CPP; and

---

<sup>3</sup> *Id.*, ¶¶ 2, 15-17. Called party pays emerged as the model for U.S. wireless calls in large part because of the way the first interconnection arrangements between LECs and cellular carriers were structured. These arrangements treated cellular companies as end users and did not provide a mechanism for cellular operators to pass the costs of terminating a landline originated call to the LEC.

<sup>4</sup> *See infra* at 4-7 and accompanying notes.

<sup>5</sup> *See id.*

- ◆ Require industry segments to work together to resolve the technical aspects of CPP and to develop:
  - workable procedures for the exchange of customer billing information;
  - means for billing “transient” calling parties and preventing revenue loss; and
  - with participation from the states, uniform nationwide customer notification procedures.

## **II. A NATIONAL POLICY FRAMEWORK PROMOTING THE AVAILABILITY OF A CALLING PARTY PAYS SERVICE OPTION IS CRITICAL TO MEETING THE GOALS OF THE COMMUNICATIONS ACT**

### **A. Wide-spread Availability Of CPP Will Promote Several Of Congress’s And The Commission’s Major Goals**

As an essential first step to facilitate nationwide availability of a calling party pays service option, Motorola urges the Commission promptly to declare CPP in the public interest and to establish a federal policy framework fostering the voluntary provision of CPP by CMRS carriers throughout the nation. As discussed in detail below, establishment of a federal framework for CPP will promote the public interest by furthering two of Congress’s and the Commission’s major goals – namely: (1) increasing the level of competition in local exchange and exchange access markets,<sup>6</sup> and (2) promoting effective use of radio spectrum.<sup>7</sup> In addition, adoption of national policies promoting CPP will help make wireless offerings more responsive to the needs of consumers and increase the range of CMRS service options.

---

<sup>6</sup> See generally Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

<sup>7</sup> See 47 U.S.C. § 151.

With respect to the first of these goals, market analysts and members of the CMRS industry generally agree that the discrepancy between who pays for originating wireline and wireless calls in the U.S. has impeded consumer acceptance of wireless products and prevented wireless offerings from being viewed as realistic substitutes for traditional landline local exchange services.<sup>8</sup> Implementation of a CPP option is seen as essential if consumers are expected to treat wireless offerings as viable alternatives to landline telephone usage.<sup>9</sup>

Many subscribers are more comfortable with, and more accustomed to, the typical wireline service arrangement, where telephone users are not required to pay for calls they receive. The anomaly between wireless and wireline methodologies with respect to who pays for receiving calls has contributed to the perception that wireless services are a costly extravagance and, in many cases, is cited as a deterrent to subscribership.<sup>10</sup> Market research shows that, because wireless customers pay for both incoming and outgoing calls, many subscribers have been trained to limit use of mobile phones to emergencies and to stay acutely aware of the number of calls placed or received as well as minutes of use.<sup>11</sup> Surveys indicate that, for these

---

<sup>8</sup> See, e.g., Reinhardt Krause, *Get Cell Calls? Sprint Is Trying To Reverse Fees*, Investor's Business Daily, Oct. 2, 1997, Computers & Technology, at A6; *Regulators Consider Switch To "Caller Pays" Cellular Billing*, Houston Chron., Sept. 26, 1997, Business, at 3; Randy Sukow, *CTIA Seeks Foundation For Wide Acceptance Of Calling Party Pays*, Washington Telecom News, April 21, 1997 (Vol. 5, No. 16); *Report Cautions Carriers To Position Services As Complement To Landline To Ensure Continued Success*, Mobile Phone News, Jan. 20, 1997 (Vol. 15, No. 3).

<sup>9</sup> See, e.g., *Report Cautions Carriers To Position Services As Complement To Landline To Ensure Continued Success*, Mobile Phone News, Jan. 20, 1997 (Vol. 15, No. 3); John M. Campanola, *Who Pays For The Call*, Newaves, Sept. 1996, at 62-64.

<sup>10</sup> John M. Campanola, *Who Pays For The Call*, Newaves, Sept. 1996, at 63.

<sup>11</sup> D.R. Stewart, *Widespread Wireless: Industry Pulls Switch For Growth With "Calling*  
(Continued...)



same reasons, many wireless subscribers do not leave their phones turned on.<sup>12</sup> Similarly, because of the fear of uncontrollable charges associated with unwanted or unnecessary incoming calls, U.S. wireless customers are generally hesitant to publish their phone numbers.<sup>13</sup> In fact, one report indicates that, because they are so unaccustomed to giving their numbers out, most U.S. wireless subscribers don't even know what their mobile phone number is.<sup>14</sup>

Most experts agree that wide-spread availability of a calling party pays service option will go far to help change the prevailing perception of wireless phones as being for "emergency use only" and increase consumer willingness to use mobile phones more liberally.<sup>15</sup> Many analysts also agree that, absent nationwide availability of CPP, wireless offerings will simply

---

(...Continued)

*Party Pays" Plan*, Tulsa World, Sept. 24, 1997, Business, at E8; John M. Campanola, *Who Pays For The Call*, Newaves, Sept. 1996, at 63; Nancy Gohring, *A Reversal Of Thinking: Calling Party Pays*, Newaves, Sept. 1997, at 20; Noreen Seebacher, *Cellular Phone Users Get A Break; Caller, Not The Subscriber, Now Picks Up The Charge For A Call Under A New Plan By AirTouch Cellular*, Detroit News, Oct. 13, 1997, at C6.

<sup>12</sup> See, e.g., Shelby Gilje, *You May Pay For Your Calls To Cell Phones*, Seattle Times, Sept. 24, 1997, at E1; Jon G. Auerbach, *Lessons From Europe Drive Frantic Scramble In Telephone Industry*, Wall Street Journal, July 16, 1997, at A8; *Calling Party Pays, Prepaid May Be Answer To Reduce Churn, Open Revenue Streams*, Mobile Phone News, Nov. 25, 1996 (Vol. 14, No. 47).

<sup>13</sup> See, e.g., Shelby Gilje, *You May Pay For Your Calls To Cell Phones*, Seattle Times, Sept. 24, 1997, at E1; Jon G. Auerbach, *Lessons From Europe Drive Frantic Scramble In Telephone Industry*, Wall Street Journal, July 16, 1997, at A8; *Calling Party Pays, Prepaid May Be Answer To Reduce Churn, Open Revenue Streams*, Mobile Phone News, Nov. 25, 1996 (Vol. 14, No. 47).

<sup>14</sup> Nancy Gohring, *A Reversal Of Thinking: Calling Party Pays*, Newaves, Sept. 1997, at 17.

<sup>15</sup> See *Report Cautions Carriers To Position Services as Complement To Landline To Ensure Continued Success*, Mobile Phone News, Jan. 20, 1997 (Vol. 15, No. 3); John M. Campanola, *Who Pays For The Call*, Newaves, Sept. 1996, at 63.

never obtain the level of consumer acceptance needed to penetrate landline carriers' stronghold on the local exchange market.<sup>16</sup>

Industry analysts also anticipate that wireless phone usage will increase significantly – leading to more effective use of spectrum – if CPP is available on a wide-spread basis. It stands to reason that, if wireless subscribers do not have to pay for calls they receive, they will be more likely to leave their phones on and to distribute their phone numbers.<sup>17</sup> This, coupled with wider availability of a call structure subscribers are more comfortable with, will increase the number of calls to wireless phones, resulting in more intensive use of wireless spectrum. In this connection, it is worth noting that, in countries where CPP is the standard practice, monthly wireless minutes of use typically are more than double – and in some cases five to six times greater – than average monthly minutes of use by U.S. wireless subscribers.<sup>18</sup>

---

<sup>16</sup> See, e.g., Randy Sukow, *CTIA Seeks Foundation For Wide Acceptance Of Calling Party Pays*, Washington Telecom News, April 21, 1997 (Vol. 5, No. 16); accord Reinhardt Krause, *Get Cell Calls? Sprint Is Trying To Reverse Fees*, Investor's Business Daily, Oct. 2, 1997, Computers & Technology, at A6;.

<sup>17</sup> The wireless industry and analysts predict that implementation of CPP will significantly increase wireless telephone usage in the U.S. See, e.g., D.R. Stewart, *Widespread Wireless: Industry Pulls Switch For Growth With "Calling Party Pays" Plan*, Tulsa World, Sept. 24, 1997, Business, at E8; *Report Cautions Carriers To Position Services as Complement To Landline To Ensure Continued Success*, Mobile Phone News, Jan. 20, 1997 (Vol. 15, No. 3); John M. Campanola, *Who Pays For The Call*, Newaves, Sept. 1996, at 62-64.

<sup>18</sup> See Nancy Gohring, *A Reversal Of Thinking: Calling Party Pays*, Newaves, Sept. 1997, at 17 (monthly usage levels in the U.S. average 102 minutes of use, compared to 760 minutes of use in Lebanon, 500-550 minutes of use in Israel, 400 minutes of use in Sweden, 300-350 minutes of use in Italy, 250 minutes of use in the United Kingdom, and 150 minutes of use in Germany). In addition to hampering the use of wireless products and services in the U.S., lack of a wide-spread CPP option has skewed wireless traffic patterns. Available estimates indicate that, in the United States, only 20 percent of all calls involving wireless customers originate on a wireline network. NOI, ¶ 10; see also Nancy Gohring, *A Reversal Of Thinking: Calling Party Pays*, Newaves, Sept. 1997, at 17 (citing an outgoing-incoming balance in the U.S. of 80-20). In  
(Continued...)

Finally, broader availability of calling party pays will serve the public interest by making wireless offerings more responsive to the needs of consumers and by expanding the range of available service options. According to a report issued last January by the Giga Information Group, "[c]alling party pays . . . is . . . highly valued by both current and prospective customers . . . ."<sup>19</sup> The report goes on to state that, "[l]ack of [calling party pays] is undoubtedly both a barrier to adoption for new customers and a source of dissatisfaction for most current cellular subscribers . . . ."<sup>20</sup> Other authorities also support this perception and suggest that availability of a CPP service option will assist significantly in making wireless offerings more responsive to consumer demands.<sup>21</sup>

**B. Enunciation Of A National Policy For CPP Is Crucial To Ensure That A CPP Service Option Is Made Available**

To foster availability of a CPP service option, it is essential that the Commission enunciate a national policy finding that CPP is in the public interest and announcing that barriers to efficient introduction of CPP service are inconsistent with this national policy. The primary deterrents to wide-spread implementation of CPP to date have been the lack of consistent

---

(...Continued)

contrast, in countries where CPP is the billing model, the number of calls from wireline-to-wireless phones is essentially equal to the number of wireless-to-wireline calls. See Nancy Gohring, *A Reversal Of Thinking: Calling Party Pays*, Newaves, Sept. 1997, at 17 (indicating that, in countries where CPP is the billing standard, including Israel, Sweden, and Italy, the outgoing-incoming balance is 50-50 or, in the case of the United Kingdom 60-40).

<sup>19</sup> *Report Cautions Carriers To Position Services as Complement To Landline To Ensure Continued Success*, Mobile Phone News, Jan. 20, 1997 (Vol. 15, No. 3).

<sup>20</sup> *Id.*

<sup>21</sup> See, e.g., John M. Campanola, *Who Pays For The Call*, Newaves, Sept. 1996, at 64.

standards for the exchange of billing information between carriers and state regulatory impediments, such as outright prohibitions on the provision of CPP service or a myriad of conflicting state notification procedures.<sup>22</sup> In these circumstances, the Commission can best promote effective delivery of CPP by establishing a federal regulatory framework that encourages industry members to develop consistent methods for the exchange of information between wireline and wireless carriers, standardized procedures for wireline-to-wireless connections, and uniform national customer notification mechanisms. This national policy framework will also assist the efforts of CMRS carriers, states, equipment manufacturers, and others to ensure that CPP is available at reasonable costs.<sup>23</sup>

### **III. THE FCC HAS CLEAR STATUTORY AUTHORITY TO ESTABLISH A NATIONAL POLICY FRAMEWORK FOR CMRS CALLING PARTY PAYS**

#### **A. The FCC Has Authority To Establish A National Policy For CPP Under Sections 332 And 2(b) Of The Communications Act**

In accordance with its broad power to regulate mobile radio service offerings, the Commission has clear legal authority to establish a federal policy promoting the availability of a nationwide calling party pays service option. Specifically, Sections 332(c) and 2(b) of the Communications Act, as revised by Congress's 1993 amendments, establish a comprehensive

---

<sup>22</sup> See CTIA Service Report, *The Who, What, and Why of "Calling Party Pays,"* July 4, 1997, at 14-16.

<sup>23</sup> See *Rules and Policies Regarding Calling Number Identification Service – Caller ID*, 9 FCC Rcd 1764, 1766 (1994) (Report and Order and Further Notice of Proposed Rule Making) (declaring nationwide availability of caller ID service in the public interest and establishing a federal policy framework for caller ID).

federal regulatory framework for mobile services<sup>24</sup> and give the FCC sole and explicit regulatory authority over all interstate and intrastate rate and entry aspects of CMRS offerings.<sup>25</sup>

Establishment of federal policies ensuring effective nationwide availability of CPP is clearly consistent with Congress's desire to promote the ubiquitous deployment of CMRS offerings and falls within the comprehensive federal regulatory framework established for commercial mobile radio services.

**B. The FCC Has Authority To Establish A National Policy For CMRS Calling Party Pays In Accordance With Its Exclusive Jurisdiction Over LEC-CMRS Interconnection**

In addition, the Commission's broad regulatory authority over LEC-CMRS interconnection clearly empowers it to establish national policies defining CPP service and developing a federal model for LEC-CMRS interconnection obligations as they pertain to the nationwide implementation of CPP. In particular, Section 332(c)(1)(B) of the Act delegates to

---

<sup>24</sup> The legislative history accompanying Congress's 1993 amendments indicates that Congress intended to "foster the growth and development of mobile services that, by their nature, operate without regard to state lines as an integral part of the national telecommunications infrastructure . . . ." See H.R. Rep. No. 103-111, at 260 (1993) (House Report) [hereinafter *House Report*]. See also H.R. Rep. No. 103-213, at 490 (1993) (Conference Report) (indicating that Congress intended to create a "Federal regulatory framework to govern the offering of all commercial mobile services").

<sup>25</sup> See 47 U.S.C. §§ 152(b), 332(c)(3)(A). Section 332(c)(3)(A) provides that, notwithstanding Section 2(b) (giving states general authority over intrastate radio communications services), "no state or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service . . . ." Section 332(c)(3)(A) does permit states to petition the FCC for authority to regulate rates of a commercial mobile service if (i) market conditions with respect to that service fail to protect subscribers adequately from unjust and unreasonable rates; or (ii) these market conditions exist and the service is a replacement for landline telephone exchange service for a substantial portion of the telephone landline exchange service within the state. Section 332(c)(3)(A) also gives states the authority to regulate "other terms and conditions" of commercial mobile services.

the FCC exclusive jurisdiction over the terms of interconnection between LECs and CMRS providers, irrespective of the existence of physically intrastate facilities or the intrastate nature of the traffic in question.<sup>26</sup>

Significantly, the U.S. Court of Appeals for the Eighth Circuit, in *Iowa Utilities Board v. FCC*,<sup>27</sup> recently reaffirmed the broad scope of the FCC's jurisdiction over LEC-CMRS interconnection. In particular, the court clarified that Section 332 gives the Commission ultimate

---

<sup>26</sup> Section 332(c)(1)(B) provides as follows:

Upon reasonable request of any person providing commercial mobile service, the Commission shall order a common carrier to establish physical connections with such service pursuant to the provisions of section 201 of this Act. Except to the extent that the Commission is required to respond to such a request, this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection pursuant to this Act.

Read in conjunction with Congress's other amendments to Sections 332 and 2(b), a comparison of Sections 201 and 332(c)(1)(B) makes plain that Section 332(c)(1)(B) causes the Commission's authority under Section 201 to extend to the interstate and intrastate aspects of LEC-CMRS interconnection. The duty to provide interconnection under Section 201 extends only to those common carriers "engaged in interstate or foreign communication." Section 332(c)(1)(B) does not distinguish between interstate or intrastate common carriers; it merely states that the Commission "shall order a common carrier to establish physical connections" with persons providing CMRS offerings. A reading of Section 332(c)(1)(B) to grant the FCC the power to regulate LEC-CMRS interconnection without regard to intrastate and interstate jurisdictional boundaries is also consistent with Congress's amendment to Section 2(b) of the Act exempting CMRS services from intrastate and interstate jurisdictional distinctions, as well as Congress's and the Commission's observations that, because CMRS offerings are part of an interstate network, they are interstate in nature and subject to the Commission's sole jurisdiction. *See House Report*, at 261 (indicating that Congress "considers the right to interconnect an important one which the Commission shall seek to promote, since interconnection serves to enhance competition and advance a seamless national network"); *see also Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers*, 11 FCC Rcd 5020, 5073 (1996) (Notice of Proposed Rule Making) (acknowledging the interstate nature of CMRS services).

<sup>27</sup> 120 F.3d 753, 800 n.21 (8<sup>th</sup> Cir. 1997).

authority to issue “rules of special concern to the CMRS providers,” and, in that instance, affirmed the FCC’s authority to establish rules governing interconnection pricing between LECs and CMRS carriers.<sup>28</sup>

At bottom, CPP is an interconnection issue – delivery of CPP service hinges on ensuring that LECs and CMRS carriers cooperate to implement a unique method of interconnection that will permit the effective exchange of information needed to bill originating callers and to rate calls properly. In a multi-carrier, multi-network environment, this process is extremely complicated. For example, a seminal issue that needs to be resolved in order to facilitate nationwide CPP is the determination of where in the path of a call the network recognizes that a CPP option applies and rate the call accordingly. As outlined in CTIA’s service report, there are essentially three choices in answer to this question: (1) the originating switch, (2) an intermediate switch, or (3) the terminating CMRS carrier’s switch.<sup>29</sup> Each of these options presents different implementation issues – including how to ensure that the switch that recognizes the call as a CPP call has access to the appropriate database to rate and bill the call, how to ensure that revenue is transferred among carriers, how each carrier should ascertain correct, and varying, per minute charges, and how to prevent “leakage” from unbillable phones

---

<sup>28</sup> In particular, the Eighth Circuit upheld the FCC’s rules addressing the compensation scheme for the transport and termination of traffic between local exchange carriers and mobile service providers. *Id.* In doing so, the court stated that, “[b]ecause Congress expressly amended section 2(b) to preclude state regulation of entry of and rates charged by . . . CMRS providers . . . and because section 332(c)(1)(B) gives the FCC the authority to order LECs to interconnect with CMRS carriers, we believe that the Commission has the authority to issue rules of special concern to the CMRS providers . . .” *Id.*

<sup>29</sup> See CTIA Service Report, *The Who, What, and Why of “Calling Party Pays,”* July 4, 1997, at 21-22.

such as pay phones and hotels – that must be resolved to facilitate availability of CPP between numerous different, interconnecting networks.<sup>30</sup> Experience has shown that, because there is no uniform service definition for CPP and no consistent framework for LEC-CMRS interconnection as it relates to CPP, nationwide deployment of CPP service is impossible.<sup>31</sup> It is, therefore, crucial that, as part of its national policy pronouncement for CPP, the Commission exercise its jurisdiction over LEC-CMRS interconnection and develop a federal model that defines respective carriers' interconnection obligations and addresses the relevant implementation questions.

**C. States' Limited Jurisdiction Over "Other Terms And Conditions" Does Not Undermine The FCC's Authority To Establish A National Policy For CPP**

Although Section 332(c)(3)(A) of the Act permits states to regulate "other terms and conditions" of commercial mobile services,<sup>32</sup> this in no way precludes the Commission from establishing national policies promoting interconnection arrangements for CPP, nor does it allow states to undermine a CMRS carrier's ability to obtain the requisite type of interconnection and billing information. First, the phrase "terms and conditions" used in Section 332(c)(3)(A) does not override the FCC's authority to regulate CMRS rates and entry and it does not encompass "terms and conditions" of interconnection. Any reading to the contrary would render the Congress's explicit grant of authority to the FCC over CMRS rates, entry, and interconnection a

---

<sup>30</sup> *Id.* at 22.

<sup>31</sup> *Id.* at 10.

<sup>32</sup> *See* 47 U.S.C. § 332(c)(3)(A).



nullity. Second, the legislative history that accompanies Section 332(c)(3)(A) indicates that, by “terms and conditions,” Congress intended to include a limited list of matters, such as “customer billing information and practices and other consumer protection matters; facilities siting (*e.g.*, zoning); transfers of control; the bundling of services and equipment; and the requirement that carriers make capacity available on a wholesale basis.”<sup>33</sup>

While the provision of billing information *to customers* and customer notification procedures may fall within states’ authority to regulate “other terms and conditions,” calling party pays is *not* strictly a matter of *customer billing*. On the contrary, as discussed in the foregoing sections of this pleading, CPP involves many other aspects that lie within the FCC’s jurisdictional authority, including the interconnection aspects of LEC-CMRS networks and the transfer of billing information between carriers.

Furthermore, CPP is in fact a separate service option that is fundamentally different from the current called party pays model because it involves unique interconnection requirements and is perceived by customers as an additional service option. Treatment of CPP as a separate service option is wholly consistent with the Commission’s treatment of operator service calls in the wireline context, which are viewed as service separate from direct-dialed calls.<sup>34</sup> Against this backdrop, it is clear that allowing states to impede the offering of the CPP option is the same thing as permitting states to regulate a CMRS carrier’s choice of how to configure its service

---

<sup>33</sup> *House Report*, at 261.

<sup>34</sup> *See Policies and Rules Concerning Operator Service Providers*, 6 FCC Rcd 2744, 2755 (1991) (Report and Order) (operator services can be provided by LECs or alternative operator service providers and generally include three “operator assisted” categories: calling card, collect, and third number billing).

and, as such, is tantamount to imposition of an entry regulation prohibited by Section 332(c)(3)(A).

Nothing in the Commission's *Arizona Decision*<sup>35</sup> contradicts this conclusion. In the *Arizona Decision*, the Commission denied Arizona's request to continue regulating rates and market entry for CMRS providers in accordance with Section 332(c)(3)(A).<sup>36</sup> In doing so, the Commission rejected Arizona's argument that two pending state proceedings proved the need for continued rate regulation. The Commission noted that one of the proceedings "involved a situation in which the [Arizona Corporation Commission] intervened in a matter concerning 'calling party pays' customer billing."<sup>37</sup> The Commission then stated that, "[u]nder the Communications Act, . . . billing practices are considered 'other terms and conditions' of CMRS offerings, not rates, and the ACC retains authority to regulate such practices."<sup>38</sup>

This passing dictum in no way represents a determination that CPP is wholly a billing issue, or that all aspects of CPP are exclusively a matter for state regulation. First, the statement was made in passing and, as such, is not based on a reasoned analysis of whether state regulation of the CPP service option constitutes regulation of CMRS rates or entry. In addition, as discussed above, CPP is not simply a matter of customer billing; it includes a whole host of technical and customer perception issues. As a result, if the *Arizona Decision* is read to give

---

<sup>35</sup> *Petition of Arizona Corporation Commission To Extend State Authority Over Rate and Entry Regulation of All Commercial Mobile Radio Services*, 10 FCC Rcd 7824 (1995) (Report and Order and Order on Reconsideration).

<sup>36</sup> *Id.*

<sup>37</sup> *Id.* at 7837.

<sup>38</sup> *Id.*

states exclusive authority to regulate all aspects of CPP, it should be overruled. Such a reading would be incorrect as a matter of law because it runs afoul of the FCC's authority under Sections 332(c) and 2(b) of the Act, as outlined previously. Finally, even if the statement in the *Arizona Decision* is not overruled, it does not preclude concurrent state and federal jurisdiction over CPP. Under such a scheme, the FCC would have the power to ensure that barriers to entry of CPP are eliminated and that interconnecting carriers exchange sufficient information to make it possible to bill the calling party; states would have jurisdiction to ensure that consumers are not billed for these services in a false or misleading manner.

As discussed in the following section, Motorola proposes a regulatory framework under which the FCC, the industry, and state governments work together to implement CPP through a cooperative effort. This will ensure that all relevant considerations and viewpoints are taken into account. Once national standards are agreed to, the FCC can address any inconsistent state actions on a case-by-case basis. The Commission should, however, exercise its authority under Section 332(c), if necessary, to ensure that barriers to the introduction of CPP are eliminated.<sup>39</sup>

#### **IV. THE COMMISSION'S NATIONAL POLICY FRAMEWORK SHOULD REQUIRE AFFECTED INDUSTRY SEGMENTS TO DEVELOP A TECHNICAL AGREEMENT ON METHODOLOGIES TO IMPLEMENT VOLUNTARY CMRS CPP SERVICE**

##### **A. Affected Industry Segments Should Be Encouraged To Work Together To Reach Consensus On Fundamental Technical Issues**

Motorola urges the Commission to require affected industry segments – including LECs, CMRS carriers, and equipment manufacturers – to work together to resolve the technical issues

---

<sup>39</sup> See *supra* at 9-12.

associated with the nationwide availability of CPP. Through a cooperative effort, these same groups should be required to develop technical procedures necessary to make CPP a nationwide reality. The Commission has used a similar approach in numerous contexts where complex technical issues exist, and it has generally proved effective.<sup>40</sup>

Specific issues to be addressed through industry consensus include: (1) establishment of workable and practical procedures to enable the transmission of customer billing information; (2) adoption of a single, nationwide customer notification methodology; (3) development of a standardized method or methods for billing "transient" calling parties (*e.g.*, those calling from pay phones or hotels); and (4) formulation of uniform standards governing additional technical issues, if necessary.<sup>41</sup>

**Customer Notification.** Establishment of a single nationwide customer notification methodology is an especially important component of an effective national policy for CPP. Mobile service customers are, by definition, persons on the move. Wireless subscribers expect to be able to use their phones and take advantage of service options they have selected across wide geographic areas without regard to state lines. If each state is allowed to adopt its own unique

---

<sup>40</sup> See, *e.g.*, *Administration of the North American Numbering Plan*, 9 FCC Rcd 2068, 2071 (Notice of Proposed Rule Making) (1994) ("most numbering issues have been addressed by forums and other consensus-building processes within the industry . . ."); *An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems*, 86 FCC 2d 469, 508 (1981) (Report and Order) (allowing industry groups to set technical standards for cellular telephones).

<sup>41</sup> By seeking industry agreement on technical standards, Motorola is not suggesting that a single solution is required. Rather, a range of options is acceptable if industry participants agree that these options do not increase carrier or manufacturer costs unreasonably or make CPP impractical to offer. The one exception is the need for a single, nationwide customer notification methodology, as noted below.

customer notification procedure, wide-spread availability of CPP is not technically feasible. It is simply impossible for wireless operators, LECs, and equipment manufacturers to devise products and procedures capable of complying with numerous different, and often conflicting, notification processes on demand, depending upon a mobile customer's location at any given time. This problem is further complicated by the fact that wireless systems typically span the boundaries of several states, as well as the fact that wireless subscribers can be called by wireline customers from any geographic location. A single nationwide notification method will assist significantly in overcoming the very real technical impediment that numerous different, often inconsistent, state notification schemes have presented for CMRS operators attempting to offer CPP service.

It is also essential that the unified notification methodology eventually developed be workable from a technical standpoint. Use of a distinctive signal accompanied, perhaps, by a neutral verbal message appears most easy to implement and would serve the purpose of informing consumers that they are about to place a CPP call.

State public utility commissions could be included at the outset in a cooperative effort to develop a uniform customer notification procedure if the FCC finds that state participation is desirable. A cooperative effort that includes state governments could promote state acceptance of a national notification scheme. Nevertheless, the FCC should not require all states to agree to the methodology ultimately selected; a requirement of unanimous state approval could delay nationwide introduction of CPP as establishment of a uniform notification procedure is obviously one of the more difficult issues to be resolved. In addition, as part of this process, the Commission should ensure that landline carriers – or other entities – are not allowed to use the customer notification procedure as a way to discourage CPP (*i.e.*, by identifying wireless rates as “high” or otherwise attempting to dissuade landline customers from completing calls to wireless

phones). Finally, it should be made clear that any verbal message need only remain in force until consumers become accustomed to calling party pays. After that time, use of a distinctive signal alone should suffice as a notification mechanism.

**Billing-related Issues.** Implementation of a CPP service option also raises a number of billing-related issues that should be addressed as part of the coordinated effort among industry members.<sup>42</sup> Resolution of these issues is critical to the effective development of CPP – if carriers are unable to effectuate the billing of calling parties, they will *not* offer CPP. Key billing issues include: (1) how to bill transient calls, such as calls from hotels or pay phones, to avoid “leakage” problems; (2) how to address flexibility in per-minute rates and the ability to reverse charges; (3) how to distinguish between local and toll CPP calls; (4) how to allocate roaming charges; and (5) how to bill the caller and share billed revenue between wireless and wireline carriers.

**B. The Commission Should Not Develop Detailed Federal Regulatory Requirements That Over-Regulate CPP**

Motorola also suggests that the Commission refrain from issuing detailed regulations governing the provision of CPP service or from *requiring* wireless carriers to offer CPP. Consistent with its preference for allowing market forces rather than regulatory requirements to shape the development of wireless services, the Commission should avoid issuance of

---

<sup>42</sup> These billing-related issues should not be confused with billing and collection service. Billing and collection service is a deregulated service where one carrier bills and collects for services provided entirely by another carrier. *See Detariffing of Billing and Collection Services*, 102 FCC 2d 1150, 1168-69 (1986) (Report and Order). With CPP, a CMRS call is actually jointly provided by the originating (usually wireline) carrier, the terminating CMRS carrier, and, if applicable, the intervening long distance carrier.

regulations that intrude on the business plans of wireless carriers.<sup>43</sup> Most significantly, wireless providers should be given the option of choosing to make CPP service available to end users, as their business plans and customers' needs dictate.

There is little debate that the market will be more effective than a regulatory mandate in ensuring that customers' needs are satisfied. An approach to CPP that grants carriers the flexibility to implement CPP in response to the demands of their customers will allow individual carriers to determine the optimal timing for CPP deployment and other implementation issues, based on the unique needs of their particular customer base. If customers demand access to CPP, carriers will make CPP service available in order to stay competitive and avoid customer churn. If a particular carrier chooses not to provide CPP, the wireless marketplace is sufficiently competitive that customers wanting access to CPP can simply migrate to a service provider that offers it. The benefits of CPP will be achieved in the most efficient, effective manner if the Commission leaves the CPP option voluntary and does not adopt detailed regulation of the service packages made available by CMRS carriers to their end users – something the Commission has consistently refused to do in the past.<sup>44</sup>

For identical reasons, the Commission should refrain from issuing regulations governing CPP pricing structures or levels. Competition among wireless providers will ensure more effectively that the retail price of a CPP service option is consistent with what customers think

---

<sup>43</sup> See, e.g., *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services*, 11 FCC Rcd 9462, 9474-75 (1996) (Second Report and Order and Third Notice of Proposed Rule Making).

<sup>44</sup> Motorola believes that CPP will eventually achieve wide acceptance in the marketplace. As such, there will be no reason for the FCC to mandate that result by forcing CMRS carriers to offer CPP service prior to market justification for such action.

the service is worth. Moreover, attempts by the Commission to regulate prices could distort the market and ultimately inhibit the wide-spread deployment of calling party pays.

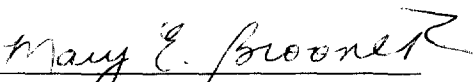
## V. CONCLUSION

For the reasons set forth above, Motorola urges the Commission to establish a national policy framework promoting uniform procedures to be used to govern the provision of a calling party pays service option by CMRS carriers. Market analysts and members of the wireless industry broadly agree that wider availability of CPP is needed to stimulate wireless usage and put wireless options on an equal competitive footing with traditional landline local exchange services. Establishment of a uniform national policy framework will help ensure that CPP is made available in an effective manner by fostering regulatory consistency and eliminating barriers to the successful implementation of nationwide CPP service.

Respectfully submitted,

**Motorola, Inc.**

By:

  
Mary E. Brooner  
Assistant Director, Telecommunications  
Strategy and Regulation  
Corporate Government Relations Office  
Motorola, Inc.  
1350 I Street, N.W., Suite 400  
Washington, D.C. 20005

(202) 371-6900

Dated: December 16, 1997



## **CERTIFICATE OF SERVICE**

I, Robin Walker, hereby certify that on this 16<sup>th</sup> day of December, 1997, a true copy of the attached "Comments of Motorola, Inc." has been served, via hand delivery, on the following persons:

Ari Fitzgerald  
Office of Chairman William E. Kennard  
Federal Communications Commission  
1919 M Street, N.W. Room 814  
Washington, D.C. 20554

Paul Misener  
Office of Commissioner Harold Furchtgott-Roth  
Federal Communications Commission  
1919 M Street, N.W., Room 802  
Washington, D.C. 20554

Peter Tenhula  
Office of Commissioner Michael Powell  
Federal Communications Commission  
1919 M Street, N.W., Room 844  
Washington, D.C. 20554

Karen Gulick  
Office of Commissioner Gloria Tristani  
Federal Communications Commission  
1919 M Street, N.W., Room 826  
Washington, D.C. 20554

David Siddall  
Office of Commissioner Susan Ness  
Federal Communications Commission  
1919 M Street, N.W., Room 832  
Washington, D.C. 20554

Joseph Levin  
Policy Division  
Wireless Telecommunications Bureau  
2025 M Street, N.W., Room 5202  
Washington, D.C. 20554